



## **National Disability Insurance Scheme (Supports for Participants) Rules 2013**

*National Disability Insurance Scheme Act 2013 (the Act)*

The Act establishes the National Disability Insurance Scheme (the NDIS).

People who are participants in the NDIS will be assisted to develop a personal, goal-based plan about how they will be provided with general supports and reasonable and necessary supports.

The NDIS will respect the interests of people with disability in exercising choice and control about matters that affect them.

*National Disability Insurance Scheme (Supports for Participants) Rules 2013*

These Rules are made for the purposes of sections 33 and 34 of the Act.

These Rules are about assessment and determination of the reasonable and necessary supports that will be funded for participants under the NDIS.

These rules commence on 1 July 2013.

The Hon Jenny Macklin MP  
Minister for Families, Community Services and Indigenous Affairs  
Minister for Disability Reform

18 June 2013

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## Part 1 What these Rules are about

- 1.1 These Rules are about assessment and determination of the reasonable and necessary supports that will be funded and the general supports that will be provided for participants under the NDIS.
- 1.2 The Act sets out a number of objects for the NDIS. The objects that are particularly relevant to these Rules are the following:
- (a) supporting the independence and social and economic participation of people with disability;
  - (b) providing reasonable and necessary supports, including early intervention supports, for participants in the NDIS launch;
  - (c) enabling people with disability to exercise choice and control in pursuit of their goals and the planning and delivery of their supports.
- 1.3 In giving effect to these objects, regard is to be had to the need to ensure the financial sustainability of the NDIS.
- 1.4 The Act also sets out a number of principles for the NDIS. The principles that are particularly relevant to these Rules are the following:
- (a) people with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development;
  - (b) people with disability should be supported to participate in and contribute to social and economic life to the extent of their ability;
  - (c) people with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime;
  - (d) people with disability should be supported to receive reasonable and necessary supports, including early intervention supports;
  - (e) reasonable and necessary supports for people with disability should:
    - (i) support people with disability to pursue their goals and maximise their independence;
    - (ii) support people with disability to live independently and to be included in the community as fully participating citizens; and
    - (iii) develop and support the capacity of people with disability to undertake activities that enable them to participate in the mainstream community and in employment;
  - (f) the role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected;

- (g) people with disability should be supported to receive supports outside the NDIS, and be assisted to coordinate these supports with the supports provided under the NDIS.

## Part 2 Outline of these Rules

### *Introduction to supports for participants*

- 2.1 Once a person becomes a participant in the NDIS, they develop a plan with the Agency. The plan comprises two parts:
- (a) the **participant's statement of goals and aspirations**, which is prepared by the participant and specifies their goals, objectives, aspirations and circumstances; and
  - (b) the **statement of participant supports**, which is prepared with the participant and approved by the CEO, and sets out, among other matters, the supports that will be provided or funded by the NDIS.
- 2.2 In deciding whether to approve a statement of participant supports, the CEO is to have regard to a range of matters set out in the Act including the participant's statement of goals and aspirations. This will also specify the environmental and personal context of the participant's living (which might include, among other things, their gender and cultural background).
- 2.3 In relation to both general supports to be provided and reasonable and necessary supports to be funded, the CEO also needs to be satisfied of a number of matters, including the following:
- (a) the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;
  - (b) the support will assist the participant to undertake activities, so as to facilitate the participant's social or economic participation;
  - (c) the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
  - (d) the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
  - (e) the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
  - (f) the support is most appropriately funded or provided through the NDIS, and is not more appropriately funded or provided through other service systems (**service systems** is defined in paragraph 6.4).

- 2.4 The CEO may consider supports in a plan either in relation to a particular support or a package of supports to achieve an outcome. If the participant has identified or requested particular supports, the CEO will also have regard to these.
- 2.5 In administering the NDIS and in approving each plan the CEO must have regard to objects and principles of the Act including the need to ensure the financial sustainability of the NDIS and the principles relating to plans.

*Paragraphs 2.1-2.5 summarise a number of provisions of the Act including aspects of sections 3, 33 and 34 of the Act.*

*There are a number of other sets of rules made under the Act that are relevant to have regard to in the context of these Rules—see in particular the National Disability Insurance Scheme (Plan Management) Rules 2013 and the National Disability Insurance Scheme (Supports for Participants—Accounting for Compensation) Rules 2013.*

### **Outline**

- 2.6 **Part 3** sets out criteria or considerations that the CEO is to use in deciding whether the CEO is satisfied in relation to some of the matters in paragraph 2.3. These are:
- (a) value for money (see paragraph 2.3(c));
  - (b) whether the support is effective and beneficial (see paragraph 2.3(d));
  - (c) taking account of the expectations of what is reasonable to expect families, carers, informal networks and the community to provide in informal supports (see paragraph 2.3(e));
  - (d) whether the support is appropriate under the NDIS (see paragraph 2.3(f)).
- 2.7 **Part 4** relates to needs assessments and the use of assessment tools when conducting such assessments.
- 2.8 **Part 5** sets out general criteria for supports, and supports that will not be funded or provided.
- 2.9 **Part 6** provides for other matters, such as how these Rules are to be interpreted.
- 2.10 **Schedule 1** sets out considerations relating to whether supports are most appropriately funded through the NDIS, which is relevant to the matter set out in paragraph 2.3(f).

## **Part 3 Assessing proposed supports**

### ***Value for money***

- 3.1 In deciding whether the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support, the CEO is to consider the following matters:
- (a) whether there are comparable supports which would achieve the same outcome at a substantially lower cost;
  - (b) whether there is evidence that the support will substantially improve the life stage outcomes for, and be of long-term benefit to, the participant;
  - (c) whether funding or provision of the support is likely to reduce the cost of the funding of supports for the participant in the long term (for example, some early intervention supports may be value for money given their potential to avoid or delay reliance on more costly supports);
  - (d) for supports that involve the provision of equipment or modifications:
    - (i) the comparative cost of purchasing or leasing the equipment or modifications; and
    - (ii) whether there are any expected changes in technology or the participant's circumstances in the short term that would make it inappropriate to fund the equipment or modifications;
  - (e) whether the cost of the support is comparable to the cost of supports of the same kind that are provided in the area in which the participant resides;
  - (f) whether the support will increase the participant's independence and reduce the participant's need for other kinds of supports (for example, some home modifications may reduce a participant's need for home care).

### ***Effective and beneficial and current good practice***

- 3.2 In deciding whether the support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the CEO is to consider the available evidence of the effectiveness of the support for others in like circumstances. That evidence may include:
- (a) published and refereed literature and any consensus of expert opinion;
  - (b) the lived experience of the participant or their carers; or
  - (c) anything the Agency has learnt through delivery of the NDIS.
- 3.3 In deciding whether the support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the CEO is to take into account, and if necessary seek, expert opinion.



### ***Reasonable family, carer and other support***

- 3.4 In deciding whether funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide, the CEO is to consider the following matters:
- (a) for a participant who is a **child**:
    - (i) that it is normal for parents to provide substantial care and support for children; and
    - (ii) whether, because of the child's disability, the child's care needs are substantially greater than those of other children of a similar age; and
    - (iii) the extent of any risks to the wellbeing of the participant's family members or carer or carers; and
    - (iv) whether the funding or provision of the support for a family would improve the child's capacity or future capacity, or would reduce any risk to the child's wellbeing;
  - (b) for other participants:
    - (i) the extent of any risks to the wellbeing of the participant arising from the participant's reliance on the support of family members, carers, informal networks and the community; and
    - (ii) the suitability of family members, carers, informal networks and the community to provide the supports that the participant requires, including such factors as:
      - (A) the age and capacity of the participant's family members and carers, including the extent to which family and community supports are available to sustain them in their caring role; and
      - (B) the intensity and type of support that is required and whether it is age and gender appropriate for a particular family member or carer to be providing that care; and
      - (C) the extent of any risks to the long term wellbeing of any of the family members or carers (for example, a child should not be expected to provide care for their parents, siblings or other relatives or be required to limit their educational opportunities); and
    - (iii) the extent to which informal supports contribute to or reduce a participant's level of independence and other outcomes;
  - (c) for all participants—the desirability of supporting and developing the potential contributions of informal supports and networks within their communities.

***Supports appropriately funded or provided through the NDIS***

- 3.5 Schedule 1 sets out matters for the CEO to have regard to in considering whether supports are most appropriately funded or provided through the NDIS, rather than through other service systems (***service systems*** is defined in paragraph 6.4).
- 3.6 The matters to have regard to are set out under the following headings in the Schedule:
- (a) Health (excluding mental health);
  - (b) Mental health;
  - (c) Child protection and family support;
  - (d) Early childhood development;
  - (e) School education;
  - (f) Higher education and vocational education and training;
  - (g) Employment;
  - (h) Housing and community infrastructure;
  - (i) Transport;
  - (j) Justice.
- 3.7 Where particular supports are set out in the Schedule as being appropriately funded or provided through the NDIS, the CEO must still be satisfied of a number of other matters in order for the supports to be funded or provided (see paragraphs 2.3(a)-(e) of these Rules and paragraphs 34(a)-(e) of the Act).

## **Part 4 Needs assessment**

### ***Method***

- 4.1 When deciding whether or not to approve a statement of participant supports under section 33 of the Act, the CEO is to:
- (a) identify the participant's goals, aspirations, strengths, capacity, circumstances and context; and
  - (b) assess activity limitations, participation restrictions and support needs arising from a participant's disability; and
  - (c) assess risks and safeguards in relation to the participant; and
  - (d) relate support needs to the participant's statement of goals and aspirations.

### ***Use of assessment tools***

- 4.2 When following the method in paragraph 4.1, the CEO is to make assessments of the matters that relate to the decision using any appropriate tools that are specified in operational guidelines in accordance with this Part from time to time.
- 4.3 The CEO is to ensure that tools are applied appropriately to each participant. For example, a participant should not be assessed on matters that are not relevant to them.

### ***Specification of assessment tools in guidelines***

- 4.4 The CEO is to specify, in operational guidelines, assessment tools to be used under paragraph 4.2 to make assessments of matters relating to a decision about participant supports.
- 4.5 Without limitation, the CEO may specify:
- (a) different tools to be used for adults and children; and
  - (b) tools that are specifically tailored to particular impairments.
- 4.6 A tool must:
- (a) be designed to ensure the fair and transparent assessment of reasonable and necessary supports for participants (including early intervention supports); and
  - (b) have reference to areas of activity and social and economic participation identified in the World Health Organisation International Classification of Functioning, Disability and Health as in force from time to time.

## **Part 5 General criteria for supports, and supports that will not be funded or provided**

### ***General criteria for supports***

- 5.1 A support will not be provided or funded under the NDIS if:
- (a) it is likely to cause harm to the participant or pose a risk to others; or
  - (b) it is not related to the participant's disability; or
  - (c) it duplicates other supports delivered under alternative funding through the NDIS; or
  - (d) it relates to day-to-day living costs (for example, rent, groceries and utility fees) that are not attributable to a participant's disability support needs.
- 5.2 The day-to-day living costs referred to in paragraph 5.1(d) do not include the following (which may be funded under the NDIS if they relate to reasonable and necessary supports):
- (a) additional living costs that are incurred by a participant solely and directly as a result of their disability support needs;
  - (b) costs that are ancillary to another support that is funded or provided under the participant's plan, and which the participant would not otherwise incur.

### ***Supports that will not be funded or provided***

- 5.3 The following supports will not be provided or funded under the NDIS:
- (a) a support the provision of which would be contrary to:
    - (i) a law of the Commonwealth; or
    - (ii) a law of the State or Territory in which the support would be provided;
  - (b) a support that consists of income replacement.

## Part 6 Other matters

### **Citation**

- 6.1 These rules may be cited as the *National Disability Insurance Scheme (Supports for Participants) Rules 2013*.

### **Interpretation**

- 6.2 These Rules include text that summarises provisions of the Act. The boxed notes identify such text, which does not form an operative part of these Rules.
- 6.3 Terms and expressions that are used in the Act have the same meaning in these Rules unless these Rules display a contrary intention—see the *Acts Interpretation Act 1901* and the *Legislative Instruments Act 2003*, which include definitions and rules of interpretation that apply to all Commonwealth legislation. For convenience, the more important definitions from the Act are identified or reproduced in paragraph 6.4.
- 6.4 In these Rules:

**Act** means the *National Disability Insurance Scheme Act 2013*.

**Agency**—see section 9 of the Act.

**CEO**—see section 9 of the Act.

**general supports**—see section 9 of the Act.

**NDIS** means the National Disability Insurance Scheme (see section 9 of the Act).

**NDIS rules** means the National Disability Insurance Scheme rules (see section 9 of the Act).

**participant**—see section 9 of the Act.

**participant's statement of goals and aspirations**—see section 9 of the Act.

**service systems** means general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:

- (a) as part of a universal service obligation; or
- (b) in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability.

***statement of participant supports***—see section 9 of the Act.

## **Schedule 1 Considerations relating to whether supports are most appropriately funded through the NDIS**

- 7.1 The Act limits the supports that can be provided or funded under the NDIS to supports that are not more appropriately funded or provided through other service systems, for example as part of a universal services obligation or in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability.
- 7.2 The considerations set out in this Schedule must be taken into account by the CEO in deciding whether a support is more appropriately provided or funded by the NDIS or another service system.
- 7.3 For the avoidance of doubt, while this Schedule sets out considerations relevant to whether a support should be considered to be more appropriately provided or funded through another service system, it does not purport to impose any obligations on another service system to fund or provide particular supports.

Note: The considerations set out in this Schedule are derived from the *Principles to determine the responsibilities of the NDIS and other service systems*, agreed to by the Council of Australian Governments, and dated Friday 19 April 2013. That document also includes principles relating to aged care. They are not relevant to this Schedule, but are given effect to in section 19 of the Act, and the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013*.

### ***Health (excluding mental health)***

- 7.4 The NDIS will be responsible for supports related to a person's ongoing functional impairment and that enable the person to undertake activities of daily living, including maintenance supports delivered or supervised by clinically trained or qualified health practitioners where these are directly related to a functional impairment and integrally linked to the care and support a person requires to live in the community and participate in education and employment.
- 7.5 The NDIS will not be responsible for:
- (a) the diagnosis and clinical treatment of health conditions, including ongoing or chronic health conditions; or
  - (b) other activities that aim to improve the health status of Australians, including general practitioner services, medical specialist services, dental care, nursing, allied health services (including acute and post-acute services), preventive health, care in public and private hospitals and pharmaceuticals or other universal entitlements; or
  - (c) funding time-limited, goal-oriented services and therapies:

- (i) where the predominant purpose is treatment directly related to the person's health status; or
- (ii) provided after a recent medical or surgical event, with the aim of improving the person's functional status, including rehabilitation or post-acute care; or
- (d) palliative care.

### ***Mental health***

7.6 The NDIS will be responsible for supports that are not clinical in nature and that focus on a person's functional ability, including supports that enable a person with a mental illness or psychiatric condition to undertake activities of daily living and participate in the community and social and economic life.

7.7 The NDIS will not be responsible for:

- (a) supports related to mental health that are clinical in nature, including acute, ambulatory and continuing care, rehabilitation/recovery; or
- (b) early intervention supports related to mental health that are clinical in nature, including supports that are clinical in nature and that are for child and adolescent developmental needs; or
- (c) any residential care where the primary purpose is for inpatient treatment or clinical rehabilitation, or where the services model primarily employs clinical staff; or
- (d) supports relating to a co-morbidity with a psychiatric condition where the co-morbidity is clearly the responsibility of another service system (eg treatment for a drug or alcohol issue).

### ***Early childhood development***

7.8 The NDIS will be responsible for personalised supports, specific to a child's disability (or developmental delay), which are additional to the needs of children of a similar age and beyond the reasonable adjustment requirements of early childhood development service providers.

7.9 The NDIS will be responsible for early interventions for children with disability (or developmental delay) which are:

- (a) specifically targeted at enhancing a child's functioning to undertake activities of daily living, but not supports which are specifically for the purpose of accessing a universal service such as school readiness programs that prepare a child for education; and
- (b) likely to reduce the child's future support needs, which would otherwise require support from the NDIS in later years, including through a combination and sequence of supports.



7.10 The NDIS will not be responsible for:

- (a) meeting the early childhood education and care needs of a child with a developmental delay or disability required by children of a similar age including through inclusion supports that enable children to participate in early childhood education and care settings; or
- (b) supports, which are clinical in nature provided in the health system, including acute, ambulatory or continuing care; or
- (c) new-born follow-up provided in the health system, including child and maternal health services.

### ***Child protection and family support***

7.11 The NDIS will be responsible for:

- (a) supports for children, families and carers, required as a direct result of a child's disability, that enable families and carers to sustainably maintain their caring role, including community participation, therapeutic and behavioural supports and additional respite and aids and equipment; and
- (b) where a child is in out-of-home care—supports specific to the child's disability (or developmental delay), which are additional to the needs of children of similar ages, in similar out-of-home care arrangements. The diversity of out-of-home care arrangements is recognised and the level of reasonable and necessary supports will reflect the circumstances of the individual child.

7.12 The NDIS will not be responsible for:

- (a) statutory child protection services required by families who have entered, or are at risk of entering, the statutory child protection system; or
- (b) general parenting programs, counselling or other supports for families, which are provided to families at risk of child protection intervention and to the broader community, including making them accessible and appropriate for families with disability; or
- (c) funding or providing out-of-home care or support to carers of children in out-of-home care where these supports are not additional to the needs of children of similar age in similar out-of-home care arrangements.

### ***School education***

7.13 The NDIS will be responsible for supports that a student requires that are associated with the functional impact of the student's disability on their activities of daily living (that is, those not primarily relating to education or training attainment), such as personal care and support, transport to and from school and specialist supports for transition from school education to further education, training or employment that are required because of the student's disability. Any

supports funded by the NDIS will recognise the operational requirements and educational objectives of schools.

- 7.14 The NDIS will not be responsible for personalising either learning or supports for students that primarily relate to their educational attainment (including teaching, learning assistance and aids, school building modifications and transport between school activities).

### ***Higher education and vocational education and training***

- 7.15 The NDIS will be responsible for supports that a student requires which are associated with the functional impact of the student's disability on their activities of daily living (that is, those not primarily relating to education or training attainment), such as personal care and support, transport to and from the education or training facility and specialist supports for transition from education or training to employment that are required because of the person's disability.
- 7.16 The NDIS will not be responsible for the learning and support needs of students that primarily relate to their education and training attainment (including teaching, learning assistance and aids, building modifications, transport between education or training activities and general education to employment transition supports).

### ***Employment***

- 7.17 The NDIS will be responsible for:
- (a) supports related to daily living that a person would require irrespective of whether they are working or looking for work (including personal care and support and transport to and from work); and
  - (b) frequent and ongoing supports that assist a person with disability to take part in work where the person has work capacity and is unlikely to be able to find or retain work in the open market, including with the assistance of employment services; and
  - (c) individualised assistance to support a person with disability to transition into employment, where these support needs are additional to the needs of all Australians and specifically required as a result of a person's functional impairment, eg training on workplace relationships, communication skills, dress, punctuality and attendance, and travelling to and from work.
- 7.18 The NDIS will not be responsible for:
- (a) work-specific support related to recruitment processes, work arrangements or the working environment, including workplace modifications, work-specific aids and equipment, transport within work activities and work-specific support required in order to comply with laws dealing with discrimination on the basis of disability; or

- (b) the funding or provision of employment services and programs, including both disability-targeted and open employment services, to provide advice and support to:
  - (i) people with disability to prepare for, find and maintain jobs; or
  - (ii) employers to encourage and assist them to hire and be inclusive of people with disability in the workplace (ie support, training and resources, funding assistance to help employers make reasonable adjustments, and incentives for hiring people with disability, eg wage subsidies).

### ***Housing and community infrastructure***

7.19 The NDIS will be responsible for:

- (a) supports to assist a person with disability to live independently in the community, including by building their capacity to maintain a tenancy, and support for appropriate behaviour management; and
- (b) home modifications for accessibility for a person in private dwellings; and
- (c) home modifications for accessibility for a person in legacy public and community housing dwellings on a case-by-case basis but not to the extent that it would compromise the responsibility of housing authorities to develop, maintain and refurbish stock that meets the needs of people with disability; and
- (d) user costs of capital in some situations where a person requires an integrated housing and support model and the cost of the accommodation component exceeds a reasonable contribution from individuals.

7.20 The NDIS will not be responsible for:

- (a) the provision of accommodation for people in need of housing assistance, including routine tenancy support and ensuring that appropriate and accessible housing is provided for people with disability; or
- (b) ensuring that new publicly-funded housing stock, where the site allows, incorporates Liveable Housing Design features; or
- (c) homelessness-specific services including homelessness prevention and outreach, or access to temporary or long term housing for participants who are homeless or at risk of homelessness; or
- (d) the improvement of community infrastructure, ie accessibility of the built and natural environment, where this is managed through other planning and regulatory systems and through building modifications and reasonable adjustment where required.

## **Transport**

7.21 The NDIS will be responsible for:

- (a) supports for a person that enable independent travel, including through personal transport-related aids and equipment, or training to use public transport; and
- (b) modifications to a private vehicle (ie not modifications to public transport or taxis); and
- (c) the reasonable and necessary costs of taxis or other private transport options for those not able to travel independently.

7.22 The NDIS will not be responsible for:

- (a) ensuring that public transport options are accessible to a person with disability, including through the funding of concessions to people with disability to use public transport; or
- (b) compliance of transport providers and operators with laws dealing with discrimination on the basis of disability, including the *Disability Standards for Accessible Public Transport 2002*; or
- (c) transport infrastructure, including road and footpath infrastructure, where this is part of a universal service obligation or reasonable adjustment (including managing disability parking and related initiatives).

## **Justice**

7.23 In sections 7.24 and 7.25:

**person not in custody** means a person who is subject to the justice system (including relevant elements of the civil justice system), but is not in a custodial setting (for example, a person on bail, a person under a community based order that places controls on the person to manage risks to the individual or to the community, a former prisoner on parole, or a person in home detention).

**person in custody** means a person in a custodial setting, whether on remand or as a result of a sentence or other court order (including in a youth detention and training facility), or in a secure mental health facility.

**transition supports**, for a person in a custodial setting, means supports to facilitate the person's transition from the custodial setting to the community that:

- (a) are reasonable and necessary; and
- (b) are required specifically as a result of the person's functional impairment.

7.24 The NDIS will be responsible for:

- (a) in relation to a person not in custody—reasonable and necessary supports on the same basis as all other persons; and
- (b) in relation to a person in custody:
  - (i) reasonable and necessary supports other than those mentioned in paragraph 7.25(a), to the extent appropriate in the circumstances of the person's custody; and
  - (ii) transition supports.

7.25 The NDIS will not be responsible for:

- (a) the day-to-day care and support needs of a person in custody, including supervision, personal care and general supports; or
- (b) ensuring that criminal justice system services are accessible for people with disability including appropriate communication and engagement mechanisms, adjustments to the physical environment, accessible legal assistance services and appropriate fee waivers; or
- (c) general programs for the wider population, including programs to prevent offending and minimise risks of offending and re-offending and the diversion of young people and adults from the criminal justice system; or
- (d) the management of community corrections, including corrections-related supervision for offenders on community based orders; or
- (e) the operation of secure mental health facilities that are primarily clinical in nature.